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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,809	06/18/2001	Wolfgang Steck	ZIP 98 P3024	2557

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EXAMINER

STINSON, FRANKIE L

ART UNIT PAPER NUMBER

1746

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,809

Applicant(s)

STECK ET AL.

Examiner

FRANKIE L. STINSON

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 April 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
4a) Of the above claim(s) 4 and 7 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 5, 6 and 8-17 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/22/04
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 6, 16 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Germany 36 27 732 (Germany'732).

Re claims, 1, 16 and 17, note that Germany'732 discloses (in fig. 4) a washer having a washing compartment (4) and a pump (13a) fluidically connected to the washing compartment channeling liquid to the washing compartment, the pump disposed outside the washing compartment and including a pump housing (22a) defining an interior and housing a motor (45a) and an impeller (43a, 46a), a heater (17a) for heating washing liquid, the heater comprising: a heating device (17) disposed on the pump housing in heat-conducting contact with the interior of the pump housing. As for the preamble statement of a dishwasher, please note that the same has not been afforded the weight of a limitation in that the body of the claims fails to recite any limitations that give life and meaning to the phrase dishwasher(see MPEP 2111.02). Re claim 2, Germany'732 discloses the heater on the outside of the pump housing. Re claim 5 and 6, Germany'732 respectively discloses the heating device as an electrical resistance heater and as a tubular heater.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Germany'732 in view of Langer.

Claim 3 defines over Germany'732 only in the recitation of the heating device being disposed on the pump housing on the side of the pump facing the motor. This is deemed to be an obvious choice of design in that the position of the heater fails to present any change in the mode of operation of the device. Nonetheless, if desired to relocate the heater, the patent to Langer is cited disclosing a pump having a housing with a heating device disposed on the pump housing on the side of the pump housing facing the motor. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Germany'732, to have the heating device on the pump housing facing the motor for the purpose of providing a more compact arrangement and is considered to be an obvious design choice. (see MPEP 2144.06 C. Rearrangement of Parts: In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). However, "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the

art, without the benefit of appellant's specification, to make the necessary changes in the reference device." Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany'732.

Claim 8 defines over the Germany'732 only in the recitation of a bearing part on the pump housing, for bearing the heating device on he housing, being made of stainless steel. Nonetheless, to employ one material over another material (as that material taught by Germany'732) is deemed to be an obvious matter of design (see MPEP 2144.06, "SUBSTITUTING EQUIVALENTS KNOWN FOR THE SAME PURPOSE").

This also applicable to the applicable to the subject matter of claims 9.

6. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany'732 in view or Wright.

Claims 1-13 define over the applied prior art only in the recitation of the temperature/pressure/thermostatic switch. Wright discloses the temperature/pressure/thermostatic switch (47) It therefore would have been obvious to one having ordinary skill in the art to modify the pump of Germany'732, to include a switch as taught by Wright, for the purpose of controlling the pump and thereby preventing damage to the same.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Germany'732 in view of either Stover et al., Slayter, or UK 2,212,901 (UK'901). Claim 14 and 15 define over Germany'732 only in the recitation of the insulating layer and the protective cover. Stover, Slayter and UK'901 are all cited disclosing heating

systems where there is provided a heating element, insulation and a protective cover. It therefore would have been obvious to one having ordinary skill in the art to modify the device of Germany'732, to include insulation and a cover as taught by either Stover, Slayter or UK'901, for the purpose of preventing injury to the user.

8. Applicant's arguments filed April 24, 2004 have been fully considered but they are not persuasive. In regard to the remarks on the Germany'732 reference (Agardi), namely that the same has the heater mounted on a pipe section and not on the pump housing, please note in Germany'732, fig. 4, where there is disclosed a heated pump comprising an impeller (43a/46a), an inlet (44a) and an outlet (27a). In general the pump's impeller rotates in a housing where the fluid is pulled in through the inlet and discharged through the outlet. Since this embodiment discloses the impeller located in the pipe section 22a with an inlet and outlet being directly associated therewith, the pipe actually functions as the pump housing. If the pipe section were removed the rotating of the impeller would not provide fluid movement. In regard to argument on the combination of Germany'732 and Langer, namely that the would destroy the teachings in Germany'732, please note that while this may plausible, the patentable weight, in terms or operation, of placing the heater on the side facing the motor is not seen and is therefore considered to be a design choice absent the teaching or Langer

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In Germany'219, Germany'475, Germany'531, Japan'699, Japan'093, Japan'086 and Japan'297, note the pump/heater means.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **FRANKIE L. STINSON** whose telephone number is (571) 272-1308. The examiner can normally be reached M-F from 5:30 a.m. to 2:00 p.m. and some Saturdays from 5:30 a.m. to 11:30 a.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to **TECHNOLOGY CENTER 1700** (571) 272-1700.

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Any inquiry for missing parts of this Office Action (copies of references, pages, forms etc.), contact the TEAM LEADER Ms. Nicol Scott (571) 272-1045.

fls

A handwritten signature in black ink, appearing to read 'Frankie L. Stinson', with a long horizontal flourish extending to the right.

FRANKIE L. STINSON
Primary Examiner
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